WP(C) 5168/2006
BEFORE
THE HON'BLE THE CHIEF JUSTICE B. S. REDDY
THE HON'BLE MR.JUSTICE HRISHIKESH ROY
JUDGMENT AND ORDER

HRISHIKESH ROY, J.

Heard Mr. U. K. Nair, learned advocate for the petitioner, Ms B. Goyal, learned advocate representing the State and Mr. B. C. Das, learned senior advocate for the respondent No.2.

The present petition has been filed by a Grade-IV appointee in the establishment of District & Sessions Judge, Barpeta making a grievance of non-payment of his salary from the month of January,2006. The petitioner has prayed for a direction for payment of his arrear salary as well as for further direction for ensuring timely disbursal of his salary and allowances by the respondent-authorities.

2. The writ petitioner on the basis of appointment order dated 20-1-98 (Annexure-1) issued by the District & Sessions Judge, Kamrup, Guwahati was appointed as a 'Mali' at a fixed salary of Rs.900/- per month. It is averred that the said appointment had been made as per the practice and procedure followed for a long time whereby under the establishment of the District & Sessions Judge, engagement of Grade-IV employees, in the event of requirement, is permissible.

By the nature of engagement of the writ petitioner, he was attached to Mr. K. Sarma, District & Sessions Judge and movement of the Judge by way of transfer, also entailed movement of the writ petitioner as per the posting of the said District & Sessions Judge. In such manner, the petitioner has served in different places in different capacities and copies of orders of engagement of the petitioner are collectively enclosed to the writ petition as Annexure-2 series.

3. Eventually when Mr. K. Sarma was posted as the District & Sessions Judge, Barpeta, the petitioner was appointed as a 'Mali' on wage basis in the residential bungalow of the Judge by issuance of appointment order dated 19-5-05.

While the petitioner was engaged as aforesaid, a post of office Peon fell vacant under the establishment of the District & Sessions Judge, Barpeta because of promotion of the regular incumbent to a higher post. The petitioner being eligible applied for appointment to the said post of office Peon.

4. Thereafter, as per the established practice and procedure followed over a number of years, a selection Board was constituted for making selection for appointment to the post of office Peon and the petitioner having been found suitable, recommendation for his appointment against the said post was made by the selection Board. Following the said recommendation, the District & Sessions Judge, Barpeta issued an appointment order dated 1-12-05 (Annexure-4) appointing the writ petitioner as office Peon in the office of the District & Sessions Judge, Barpeta. The said appointment in the scale of pay of Rs.2450-3670/- per month was made against the vacancy created on promotion of one Brajen Das, the earlier incumbent in the said post.

5. On getting the appointment as aforesaid the writ petitioner immediately joined as an office Peon and it appears that he also received salary for the month of December,2005. But from the month of January,2006 onwards the petitioner was not paid his salary.

The District & Sessions Judge, Barpeta thereafter made correspondences with the Judicial Department of Government of Assam for ensuring salary payment to the petitioner. In response, through letter dated 21-4-2006 (Annexure-6) it was indicated by the Deputy Secretary of the Judicial Department, Assam that after the dissolution of the State Level Empowered Committee, (S.L.E.C.) it is necessary to obtain the concurrence of the Finance Department for making direct recruitment and the District & Sessions judge, Barpeta was asked to furnish justification through the Registrar General of the High Court so that Finance department could be moved for their concurrence.

Further correspondences were exchanged between the authorities in the State Government and the court but possibly because concurrence was not given by the Finance Department, the salary of the petitioner was not paid.

6. Being aggrieved by non-payment of salary, the writ petitioner has approached this court seeking appropriate direction in the matter of payment of his salary.

7. In response to the notice issued by the court, an affidavit on behalf of the District & Sessions Judge, Barpeta, respondent No.2 has been filed wherein the circumstances leading to appointment of the petitioner were indicated.

8. An affidavit has also been filed on behalf of the respondent-State wherein it has been indicated in so far as appointments under the High Court and its subordinate courts are concerned, the same were exempted from the purview of S.L.E.C. in respect of appointments in the respective establishment. It was categorically averred that the concerned appointing authority is competent to make appointments falling within its jurisdiction.

9. Mr. Nair, learned counsel appearing for the petitioner has submitted that in respect of appointments to be made under the establishments of the High Court or its subordinate courts, as in the present case, the insistence by the Government for approval of the Finance Department for making payment of salaries of such appointees is uncalled for. It is submitted that in terms of the provisions of Article 235 of the Constitution of India, the control over the employees under the District Court is exclusively vested in the High Court and the insistence on getting the concurrence of the Finance Department of Assam is not required in respect of a appointee under the establishment of District & Sessions Judge. The learned counsel referred to the decisions in Md. Ghouse Vs State of Andhra Pradesh reported in AIR 1959 Andhra Pradesh 497, wherein a discussion on the scope and ambit of the provisions of Article 235 has been made. In the said decision, it has been held with reference to the provisions of Articles 227 and 235 that the use of the word ’court’ not only includes the persons presiding over the court but all the functionaries of that court and any matters pertaining thereto. The power of the High Court under Article 235 of the Constitution has been interpreted to mean that the said power is to be exercised in relation to the persons presiding over the courts and in relation to the conditions of their services. Learned counsel has also drawn attention of this court to the Full Bench decision in Amar Singh Vs the Chief Justice, Punjab & Haryana High Court reported in AIR 1976 Punjab & Haryana 215, wherein it has been categorically held that by virtue of Article 235 of the Constitution, the High Court is vested with the control over the functionaries and ministerial staff attached to the District courts and the courts subordinate thereto. It is further clarified that the High Court alone is the best judge of the functionaries and ministerial staff of the subordinate courts and any impinging of such authority of the High Court in respect of such subordinate staff by an external agency would be an intrusion into the field of control exclusively given to the High Court.

Attention of this court has also been drawn to the decision of the Gujarat High Court in R. M. Gajjar Vs State of Gujarat reported in AIR 1978 Gujarat 102 wherein the Gujarat High Court approved the Full Bench decision of Amar Singh (supra) of the Punjab & Haryana High Court as well as the decision of Md. Ghouse (supra) of the Andhra Pradesh High court and held that control vested in the High courts under Article 235 of the Constitution is exercisable not only over members of the Judicial Service but also over the ministerial staff and servants of the establishment of the subordinate courts.

The decisions of the Apex court in State of West Bengal Vs Nripendra Nath Bagchi reported in AIR 1966 SC 447 and R. M Gurjar Vs High Court of Gujarat reported in (1992) 4 SCC 10 have also been cited with reference to the scope and ambit of the powers exercisable by the High Court under the provisions of Article 235 of the Constitution of India. The learned counsel for the petitioner submits that in respect of the employees under the establishment of District & Sessions Judge such as the writ petitioner, it would be the High Court alone and not the Government of Assam or its Department of Finance which would exercise control on the mode and manner of appointment of subordinate staff and the payment of their sa

laries.

10. Having regard to the provisions of Article 235 of the Constitution of India, it is seen that the High Court exercises control not only in respect of the Judicial Officers but also in respect of ministerial and subordinate staff working under the courts functioning under the High Court. This has been the consistent view taken by the courts. Having noted the ratio laid down in decisions cited, this court is of the opinion that in respect of the appointment of the writ petitioner, it is the High Court alone which will have jurisdiction and the insistence on concurrence of the Finance Department of the Government of Assam for payment of salary to such appointee, has to be considered to be an unauthorized intrusion into an arena over which the High Court exercises exclusive control.

Therefore, the stand taken in the counter affidavit by the State of Assam indicating that the High Court and its subordinate courts are exempted from the purview of the Government appointed S.L.E.C. in respect of appointments in their respective establishment appear to be the correct view in matters of such appointments.

11. Having reached the conclusion as aforesaid, this court finds no difficulty in holding that concurrence of the Finance Department is unnecessary for payment of salary to the writ petitioner. Therefore, we are of the opinion that the withholding of salary of the petitioner on the ground of absence of concurrence of the Finance Department is unjustified. Accordingly, an order for payment of salary due to the petitioner from the month of January,2006 is made. The petitioner shall also be paid his regular salary without insisting on concurrence of the Finance department for such payment.

The writ petition is allowed in terms of the above directions. No cost.

This order is directed to be complied with by the respondents within 4 (four) weeks from the date of receipt of a copy of this order.

Dispatch copy of this order within one week.